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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re KITTY I. et al., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

SHANNON I.,

Defendant and Appellant.

D043847

(Super. Ct. No. SJ11148-B/C)

APPEAL from an order of the Superior Court of San Diego County, Peter E. Riddle, Judge. (Retired Judge of the San Diego Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Based on *In re Troy Z.* (1992) 3 Cal.4th 1170, we hold in this case that a parent who pleaded "no contest" to a dependency petition's allegations may not challenge the

juvenile court's jurisdictional findings by bringing a petition for modification under Welfare and Institutions Code section 388.¹ Accordingly, we affirm the order denying Shannon I.'s section 388 petition without addressing his contention the court erred by denying him an evidentiary hearing.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2003 the San Diego County Health and Human Services Agency (the Agency) filed petitions on behalf of Shannon's daughters, Kitty and Holley, alleging he and their mother, Celia I., smoked amphetamine with their knowledge and exposed them to domestic violence, and Shannon sexually molested his teenage stepdaughter, Celia B.² Further, Shannon was arrested and charged with a variety of crimes related to Celia B. and with violation of a domestic violence restraining order.

Celia I. submitted to the petitions on the basis of the social worker's report. Shannon pleaded "no contest" to the allegations of the petitions. He signed a waiver of the privilege against self-incrimination, and rights to a trial or hearing; to see and hear witnesses testify; to cross-examine witnesses, the social worker who prepared the report and the persons whose statements are contained in the report; to testify or present evidence or witnesses; and to use the authority of the court to subpoena witnesses and to produce evidence. He initialed the waiver form's statements that "I understand that if I plead no contest . . . , the court will probably find that the petition is true," and "if the

¹ All statutory references are to the Welfare and Institutions Code.

² Neither Celia B. nor Celia I. is involved in this appeal.

petition is found to be true and the child is declared a dependent of the court, the court may assume custody of the child." Shannon agreed to a case plan requiring his participation in the Safe Paths program as a perpetrator of sexual abuse.

At a September 2003 hearing, the court determined there was a factual basis for Shannon's plea of no contest. The court sustained the petitions, finding their allegations true by clear and convincing evidence, and removed Kitty and Holley from parental custody.

In January 2003 Celia B. told the social worker she falsely accused Shannon of sexually molesting her because she was angry with him for hitting her and her mother. Celia B. asked the social worker to change her recommendation as to Celia I., but the social worker refused. Kitty told the social worker that " 'Celia [B.] told me that she would lie to you and tell you that my dad did not molest her.' "

The following month Shannon filed a petition for modification under section 388, seeking an order striking the true finding of sexual molestation and eliminating Safe Paths attendance from his case plan. Shannon alleged that Celia B. "has fully recanted all allegations and admits she has retaliated against step-dad for making her do chores, for wanting him out of the house, for being too strict and restricting her liberties." Attached to the petition was a letter Celia B. allegedly wrote to her mother, which stated she hated Shannon and wanted him out of her life, so she "lied about . . . the whole molestation story."

The court denied Shannon's section 388 petition and refused to set the matter for a contested hearing. The court found he did not make a prima facie showing of changed

circumstances or that a modification of previous orders would be in the children's best interests.

DISCUSSION

Shannon contends the court violated his due process rights by denying him an evidentiary hearing on his petition under section 388, brought solely on the ground of Celia B.'s alleged recantation of sexual abuse. "Any parent . . . may, upon grounds of change of circumstances or new evidence, petition the [juvenile] court . . . for a hearing to change, modify, or set aside any order of court previously made." (§ 388, subd. (a).) "[I]f the petition presents any evidence that a hearing would promote the best interests of the child, the court will order the hearing." (*In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1414; § 388, subd. (c).) A parent is entitled to a hearing on a showing of "probable cause." (*Ibid.*)

Shannon, however, is not entitled to appellate review of the issue because he pleaded no contest to the petitions' allegations that he sexually molested Celia B.³ As the California Supreme Court held in *In re Troy Z.*, *supra*, 3 Cal.4th at page 1180, "[a] plea of 'no contest' or an 'admission' (Cal. Rules of Court, rule 1449(e)) is the juvenile court equivalent of a plea of 'nolo contendere' or 'guilty' in criminal courts, [and a] plea of 'no contest' to allegations under section 300 at a jurisdiction hearing admits all matters essential to the court's jurisdiction over the minor." When a parent knowingly and

³ We requested supplemental briefing on the issue of Shannon's plea of no contest, and we have taken the parties' responses into consideration.

voluntarily acquiesces to the allegations of the petitions, he or she waives the right to challenge on appeal the applicability of section 300. (*In re Troy Z.*, *supra*, at p. 1180.)

Shannon asserts *In re Troy Z.* is inapplicable because it did not involve a section 388 petition or the court's asserted failure to grant a hearing. Rather, the issue there was whether after pleading no contest to a dependency petition the parents could appeal the court's finding that section 300 applied. (*In re Troy Z.*, *supra*, 3 Cal.4th at p. 1172.) The court's reasoning, however, is applicable regardless of the method of challenging jurisdictional findings. Further, Shannon's claim that a criminal plea of nolo contendere is not analogous to a plea of no contest in a juvenile proceeding is without merit, as the court in *In re Troy Z.* expressly found otherwise. (*Ibid.*)

Additionally, Shannon's reliance on *In re Brandon C.* (1993) 19 Cal.App.4th 1168, is misplaced. In that case, the father petitioned the appellate court for writ of habeas corpus, claiming his sister had recanted testimony she witnessed him sexually abuse his daughter. The court held an extraordinary writ was unavailable to modify the jurisdiction and disposition orders because the father could have petitioned the juvenile court for modification under section 388. (*In re Brandon C.*, *supra*, at pp. 1171-1174.) The case does not concern a no contest plea, and cases are not authority for propositions not considered.

Blanca P. v. Superior Court (1996) 45 Cal.App.4th 1738 is also unavailing. There, the juvenile court erroneously believed that allegations of sexual abuse in supplemental petitions had been established, and despite the parents' compliance with their case plans it terminated reunification services and scheduled a selection and

implementation hearing under section 366.26 because the father and mother continued to deny his culpability. The court held "collateral estoppel effect should not be given, at a 12- or 18-month review, to a prior finding of child molestation made at a jurisdictional hearing when the accused parents continue to deny that any molestation ever occurred and there is new evidence supporting their denial." (*Blanca P.*, *supra*, at p. 1757.) The court issued a peremptory writ of mandate directing the juvenile court to hold another 18-month review hearing on the molestation allegations. (*Id.* at p. 1759.) *Blanca P.* does not concern a no contest plea, and in contrast to the father in that case, Shannon never denied his guilt.⁴

Although the juvenile court did not rely on Shannon's no contest plea, we may affirm its ruling on any ground supported by the record. (*In re Natasha A.* (1996) 42 Cal.App.4th 28, 38.) We conclude the court properly denied the section 388 petition.

DISPOSITION

The order is affirmed.

McCONNELL, P. J.

WE CONCUR:

NARES, J.

McDONALD, J.

⁴ Shannon did not seek to withdraw his no contest plea, and thus we are not required to address issues related to the withdrawal of a plea in juvenile court.